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Supreme Court, U.S.
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NO. 80-

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

LAWRENCE DAVID RAMAPURAM,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. In a prosecution for receiving, transporting, storing, concealing, and disposing of stolen dynamite in violation of 18 U.S.C. 842(h) and 2, did the Court of Appeals err in ruling that Ramapuram had no reasonable expectation of privacy with respect to the closed, though unlocked, trunk of his immobilized "junker" automobile parked on private property on his father's farm and in holding that search of the trunk by federal and state officers, who made no effort whatsoever to obtain a warrant, and seizure therefrom of most of the stolen dynamite did not violate the Fourth Amendment?

2. In a criminal prosecution for receiving, transporting, storing, concealing and disposing of stolen dynamite in violation of 18 U.S.C. 842(h) and 2, brought under a transfer order made pursuant to 18 U.S.C. 5032 in a prior juvenile delinquency proceeding, in

which the same activities were charged as constituting an act of juvenile delinquency, did the Court of Appeals err in refusing to recognize that the District Court lacked jurisdiction in both cases because Ramapuram had been proceeded against in the juvenile case without a certification pursuant to 18 U.S.C. 5032 that the appropriate Maryland juvenile court had refused to assume jurisdiction over Ramapuram with respect to the act of juvenile delinquency involved?

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No. 80-

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1980

LAWRENCE DAVID RAMAPURAM,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner, Lawrence David Ramapuram ("Ramapuram"), prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered on October 9, 1980 (as to which Ramapuram's timely petition for rehearing was denied on November 7, 1980), in a cause there en-

titled United States of America, Appellee, vs. Lawrence David Ramapuram, Appellant, No. 79-5051 in that court, affirming Ramapuram's conviction in the United States District Court for the District of Maryalnd, at Baltimore, on December 19, 1978, after a jury verdict of guilty, returned on October 25, 1978, for violation of 18 U.S.C. 842(h) and 2, by receiving, transporting, storing, concealing and disposing of stolen dynamite.[1] In reaching its decision, the Court of Appeals (one judge of its three judge panel dissenting) rejected Ramapuram's contentions that fruits of a warrantless search of the trunk of his immobilized "junker" automobile parked on private property on his family's farm should have been suppressed and that the District Court lacked

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1 The caption of this case in this Court contains the names of all parties to the proceedings in the Court of Appeals, viz. Ramapuram and the United States of America.

jurisdiction to try him in this criminal case because the government failed to file a proper certification pursuant to 18 U.S.C. 5032, prior to proceeding against him in the juvenile case in which the transfer order authorizing criminal prosecution was made.

OPINIONS BELOW

In this case:

The opinion of the United States Court of Appeals for the Fourth Circuit (infra, App. 1) is reported at ___ F.2d ___.

The memorandum and order of the United States District Court for the District of Maryland (infra, App. 51) is not reported.

In the prior juvenile delinquency proceeding:

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit (infra, App. 69) is not reported. (See United States v. Ramapuram, 577 F.2d

738 (4th Cir. 1978), cert. denied, 439 U.S. 926, 96 S.Ct. 309, ___ L.Ed.2d ___ (1978).)

The memorandum and order of the United States District Court for the District of Maryland (Criminal No. B-76-022) (infra, App.73) is reported at 432 F. Supp. 140. (United States v. Ramapuram, 432 F. Supp. 140 (D.Md. 1977), aff'd, 577 F.2d 738 (4th Cir. 1978) (unpublished opinion), cert. denied, 439 U.S. 926, 96 S.Ct. 309, ___ L.Ed.2d ___ (1978)).

JURISDICTION

The judgment of the Court of Appeals was entered on October 9, 1980. Ramapuram then filed a timely petition for rehearing which was denied by the Court of Appeals on November 7, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Rules 20.1 and 20.4 of the Rules of this Court effective June 30, 1980.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Fourth Amendment to the Constitution of the United States provides (1 U.S.C. XLIV);

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

18 U.S.C. 2, provides:

> "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> "(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

18 U.S.C. 842(h) provides:

> "It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen."

18 U.S.C. 5032, provides, in part

pertinent hereto:

> "A juvenile alleged to have committed an act of juvenile delinquency shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to an appropriate district court of the United States that the juvenile court or other appropriate court of a State (1) . . . . refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency . . . ."
>
> * * * * *
>
> ". . . . The Attorney General shall proceed by information, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.
>
> * * * * *
>
> ". . . . [W]ith respect to a juvenile sixteen years and older alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony punishable by a maximum penalty of ten years imprisonment or more, life imprisonment, or death, criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice."

STATEMENT OF THE CASE

On June 7, 1977, Ramapuram was indicted by the federal grand jury for

the District of Maryland for unlawfully receiving, concealing, transporting, storing and disposing of approximately 100 sticks of dynamite on December 16, 1975, knowing that the same were stolen, in violation of 18 U.S.C. 842(h) and 2. [On December 16, 1975, Ramapuram was a juvenile, seventeen years old. On January 14, 1976, the United States Attorney for Maryland filed a criminal information in the United States District Court for the District of Maryland (Criminal No. B-76-022), charging Ramapuram with having committed an act of juvenile delinquency, in violation of 18 U.S.C. 5030 et seq. (and 18 U.S.C. 842(h) and 2), by his activities on December 16, 1975, with respect to the dynamite stolen on December 16, 1975. After substantial proceedings in the juvenile case, including the filing of a motion by the government to transfer the case for criminal prosecution and entry by the parties into a deferred prosecution

agreement, Ramapuram on May 13, 1977, sought dismissal of the juvenile case on the ground that the government's Section 5032 certifications (two were filed, one following Ramapuram's motion to dismiss) were not sufficient to confer jurisdiction on the District Court in that case. His efforts were unsuccessful. On May 27, 1977, the District Court denied his motion to dismiss and confirmed its earlier order, made on May 13, 1977, transferring Ramapuram for prosecution in the instant criminal case. See Ramapuram v. United States, 432 F. Supp. 146 (D.Md. 1977); aff'd, see 577 F.2d 738 (4th Cir. 1978) (unreported opinion filed May 24, 1978); cert. denied, see Ramapuram v. United States, 439 U.S. 926, 99 S.Ct. 309, ___ L.Ed.2d ___ (1978) (decided October 30, 1978).]

On August 1, 1977, Ramapuram filed in the instant criminal case a pretrial motion to dismiss the indictment, raising inter alia, the same jurisdictional contentions

based on insufficiency of the government's Section 5032 certifications as he had asserted unsuccessfully in the juvenile case. He also moved on August 29, 1977, to suppress, because obtained in violation of the Fourth Amendment, all evidence resulting from the warrantless December 31, 1975, search of the trunk of his "junker" automobile. After hearings, the motion to dismiss was denied by the District Court on September 29, 1978, and the motion to suppress was denied on October 27, 1978, on the ground that exigent circumstances validated the warrantless search of the "junker's" trunk. Trial began on October 23, 1978. On October 25, 1978, the jury found Ramapuram guilty as charged. On December 19, 1978, he was sentenced to ten years imprisonment, consecutive to a ten year sentence he was then serving in state custody under an earlier Maryland conviction. On December 28, 1978, he appealed to the United States Court of

Appeals for the Fourth Circuit, which heard argument on July 8, 1980, filed its opinion and entered its judgment on October 9, 1980, affirming his conviction, and on November 7, 1980, denied his timely petition for rehearing.

The Facts Material to Consideration of the Questions Presented for Review

1. Regarding the validity vel non of the warrantless search of the trunk of the "junker" automobile:

The dynamite involved was stolen from a cemetery explosives bunker on December 16, 1975. At about 3:00 P.M. on New Year's Eve, December 31, 1975, ATF Special Agent McMonagle, who had been investigating the theft since December 24, 1975, was told by a local Baltimore County police detective, Tenney, who had gotten the information from his son, that Ramapuram and one Fisher, who was then in the custody of Maryland State Police, who were also investigating the

theft, had stolen the dynamite and that Ramapuram had concealed it and announced an intention to blow up certain public buildings. Thereupon McMonagle first went to Ramapuram's father's residence (which was elsewhere than at the farm where the "junker" was parked), but could not locate either Ramapuram or his parent. McMonagle then went to the State Police barracks and interviewed Fisher, who told him the dynamite was hidden in the "junker's" trunk on Ramapuram's father's farm in Baltimore County. McMonagle, another ATF agent and two State policemen went at once to the farm, arriving at approximately 6:00 P.M. It was dark and raining hard. They drove into the farm road and proceeded about 200 feet when their car became stuck in the mud. McMonagle had no idea where he was, or what was the nature of the surrounding area. The officers left their car and approached the "junker" parked near a

fenced paddock about 200 feet from the main road. The "junker" had no license plates, its doors were unlocked and its trunk lock was missing. Its trunk, however, was closed. McMonagle opened the trunk, found and seized 88 sticks of the stolen dynamite which he had been seeking, removed the dynamite from the premises and subsequently turned it over to military personnel, who later exploded it by use of a countercharge. McMonagle had no warrant to search the farm premises, or the "junker", or its trunk and made no effort to obtain one. He testified at the suppression hearing, in part, that

> ". . . . By the time I got done speaking with Mr. Fisher, my first instinct was to go to the father of Larry Ramapuram. After going to the father of Larry Ramapuram and not being able to get in touch with him, I responded to where I thought the dynamite was. It was dark, it was raining, it was New Year's Eve; I did not want anybody to get hurt." (Transcript of suppression hearing, held on September 29, 1978, page 84)

2. Regarding the existence vel non

of jurisdiction to prosecute Ramapuram in a criminal proceeding:-

Ramapuram was a juvenile, seventeen years old, on December 16, 1975, when the dynamite involved in this cause was stolen. As a result of that theft, the United States Attorney for Maryland, on January 14, 1976, charged him by an information with having committed an act of juvenile delinquency by receiving, transporting, storing, concealing and disposing of the stolen dynamite, and certified to the District Court that the State's Attorney for Baltimore County refused to assume jurisdiction over Ramapuram with respect to that act of juvenile delinquency. Thereafter, Ramapuram was proceeded against in the District Court for more than a year in many ways, including by way of a deferred prosecution agreement which significantly curtailed his liberty. On May 17, 1977, after Ramapuram by his motion to dismiss the juvenile proceed-

ings raised jurisdictional issues regarding the sufficiency of the government's initial Section 5032 certification and after the District Court granted the government's then pending motion to transfer, subject to its determination of its jurisdiction, the government filed a second Section 5032 certification based, for the first time, on refusal of jurisdiction by the Circuit Court for Baltimore County, the appropriate State juvenile court, as required by Section 5032. The District Court then denied Ramapuram's motion to dismiss, declaring that the first Section 5032 certification was sufficient and that the second one in any event cured any defects in the proceedings. On Ramapuram's appeal to it, the United States Court of Appeals for the Fourth Circuit, on May 24, 1978, in an unreported, per curiam opinion, held that the second (and sufficient) certification was timely filed, because filed prior to Ramapuram's indictment and

arraignment in the instant criminal case. This Court, on October 30, 1978, denied certiorari, but did so after the Solicitor General, in his memorandum filed in opposition to Ramapuram's petition, contended, in part, that Ramapuram's assertions regarding lack of jurisdiction were premature in the juvenile case and should instead be dealt with in the instant criminal case, pointing out that Ramapuram had already raised the issue in his motion to dismiss the indictment, then pending in the District Court in this case. See Memorandum for the United States in Opposition, at page 4 thereof, filed in Ramapuram v. United States, 439 U.S. 926, 99 S.Ct.309 , ___ L.Ed.2d ___ (1978) (No. 77-1818, October Term, 1978). Ramapuram reasserted that issue in the District Court and pursued it in the Court of Appeals in this case in order to hold the question open in this case, in the event that the Solicitor General's contention regarding

the availability of the jurisdictional issue in the juvenile case constituted part of this Court's reason for denying certiorari in the juvenile case.

REASONS FOR ALLOWING THE WRIT

> In this cause the Court of Appeals decided two important questions of federal law, one dealing with what constitutes a reasonable expectation of privacy in a Fourth Amendment context, the other bearing on jurisdictional requirements under 18 U.S.C. 5032 in a federal juvenile delinquency case, which have not been, but should be, settled by this Court and, Ramapuram contends, decided them erroneously.

1. With respect to the issue of the validity vel non of the warrantless search of the trunk of Ramapuram's "junker" automobile:

In the Court of Appeals Ramapuram sought to set aside, as based in principal part on fruits of an illegal search conducted in violation of the Fourth Amendment, his conviction for violating 18 U.S.C. 842(h) and 2 by receiving, transporting, storing, concealing and disposing of stolen

dynamite. His conviction was affirmed by a three judge panel of that court, with one judge dissenting. In concluding to affirm, the panel majority upheld the validity of the warrantless search of the closed, but unlocked, trunk of Ramapuram's immobile "junker" automobile, parked on private property, next to a horse trailer on his father's farm, from which the searching officers recovered most of the stolen dynamite they were seeking. The majority held that Ramapuram had no reasonable expectation of privacy with respect to the "junker's" trunk which, the majority decided, was not a private area protected by the Fourth Amendment; hence no warrant was required to enter it. The dissenting judge concluded that Ramapuram did have a reasonable or justifiable expectation of privacy in the trunk of the car and that the search of it without a warrant violated the Fourth Amendment. (By affirming, the panel majority approved,

but for a different reason, the District Court's denial of Ramapuram's motion to suppress the fruits of the warrantless search. That court found that Ramapuram did have a reasonable expectation of privacy with respect to the trunk (App. 58-59), but refused to suppress on another ground, viz. exigent circumstances, based apparently on the sole circumstance that the object of the search was dynamite (App. 59-64).) Ramapuram urges, not only that the facts of this cause and the law properly applicable thereto fail to sustain the result reached by the panel majority below and, as is noted in the cogent and closely reasoned dissent, require suppression of all fruits of the contested search, because made in total disregard of the Fourth Amendment, but that the area dealt with, viz. the reasonable expectation of privacy concept upon which presently depends the application of the Fourth Amendment, warrants the intervention of

this Court to delineate its parameters.

Existence of a reasonable expectation of privacy with respect to the situs of a search determines whether or not Fourth Amendment protections will be invoked. See, e.g., Katz v. United States, 389 U.S. 347 (1967), Rakas v. Illinois, 439 U.S. 128 (1978), Smith v. Maryland, 442 U.S. 735 (1979). Searches of private property made without warrants are presumptively unreasonable, unless falling within a recognized exception to the Fourth Amendment's warrant requirement. Katz v. United States, 389 U.S. 347, 357 (1967), Mancusi v. DeForte, 392 U.S. 364, 370 (1968), Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971). Determination of probable cause is to be made by a judicial officer, not the police. Johnson v. United States, 333 U.S. 10, 13-15 (1948); Coolidge v. New Hampshire, supra. Officers should ordinarily be required to obtain warrants before search-

ing private property. Camara v. Municipal Court, 367 U.S. 523, 528-29 (1967).

In the instant case the searching officers made no effort at all to obtain a warrant, but simply entered the "junker's" trunk on their own determination that no warrant was required (apparently because they were searching for dynamite). The panel majority below made no effort to validate the officers' actions by fitting the case within any of the recognized exceptions to the Fourth Amendment's warrant requirement (the panel majority in fact could not; it rejected the "automobile exception" and refused to find the existence of "exigent circumstances"), but sanctioned the warrantless invasion of the "junker's" trunk simply by removing that location from the purview of the Fourth Amendment's protection on the ground that Ramapuram lacked any reasonable expectation of privacy with respect to it.

To support that conclusion, the panel

majority alluded to several factors which it said operated to reduce Ramapuram's expectation of privacy to less than constitutional dimensions, including: (1) that his "junker" car was found on his father's farm in a so-called "open field", cf. Hester v. United States, 265 U.S. 57 (1924), (although the majority acknowledged that a search of an "effect", such as occurred here, is ordinarily not controlled by the "open fields" doctrine, cf. Patler v. Slayton, 353 F. Supp. 376 (E.D. Va. 1973, aff'd 503 F.2d 472 (4th Cir. 1974)); (2) that the "container" or "effect" from which the dynamite was seized was (the trunk of) an automobile (albeit an immobilized one and even though the panel majority also found that the "automobile exception" to the search warrant requirement was not applicable to this case); (3) that the trunk of the "junker" car had no lock (although it was closed and its contents thus protected

from the view of the searching officers); and (4) that Ramapuram did not live permanently on the farm where the car was parked and was not present when the search occurred (although he used the place frequently and had a possessory interest therein).

However, Hester (which, Ramapuram suggests, is in any event totally inapposite on its facts) has not been used to validate a warrantless search of the interior of a closed container or effect, the contents of which are not visible to a searching officer, even though the container was located in an "open field". See United States v. Brown, 487 F.2d 208 (4th Cir. 1973) (per curiam opinion), cert. denied, 416 U.S. 907 (1974); United States v. Williams, 581 F.2d 45 (5th Cir. 1978), cert. denied, 440 US. 972 (1979). And protection of privacy, rather than of places, has become the paramount concern in search and seizure

cases. See Katz v. United States, 389 U.S. 347, 351 (1967). The rural nature of the area where the "junker" was parked should have operated to enhance, rather than diminish, Ramapuram's expectation of privacy, even though the trunk of the car had no lock. Country dwellers can reasonably expect greater privacy concerning their property and effects, especially when they are substantially removed from a main road, as was the situation here. There is less reason to lock any container located in a relatively isolated area. Ramapuram's car was not parked along a public road, cf. United States v. Newbourn, 600 F.2d 452 (4th Cir. 1979), but in his own back (farm) yard. That the "container" here was the trunk of a car (especially an immobile one) should not reduce Ramapuram's reasonable expectation of privacy. "Effects" are protected by the Fourth Amendment, whatever their nature, Cady v. Dombrowski, 413 U.S. 433 (1973).

Objects hidden from view inside the closed trunk of a car should be subject to Fourth Amendment protection. Cf. United States v. Holmes, 521 F.2d 859 (5th Cir. 1975) (dicta), on rehearing, 537 F.2d 227 (5th Cir. 1976). And the fact that the "container" was a car, parked on private property, did not in any event authorize a warrantless search of its trunk. Coolidge v. New Hampshire, 403 U.S. 443 (1971). That the trunk had no lock did not remove it from the ambit of the Fourth Amendment. Unlocked containers are protected, as well as locked ones. See Arkansas v. Sanders, 442 U.S. 753 (1979). And compare United States v. Bradshaw, 490 F.2d 1097 (4th Cir. 1974), cert. denied, 419 U.S. 895 (1974), a case on all fours with the instant one on its facts in which another panel of the lower court reached a decision directly in conflict with that of the panel majority in this case.

In Bradshaw a reasonable expectation of privacy was found to exist with respect to the partially enclosed body of a truck containing moonshine whiskey parked in an open area near Bradshaw's house. Bradshaw was not on the premises when federal agents searching for a still in fields near his property came upon the truck. The contents of the truck were not visible to the agents. One of them, detecting the smell of whiskey coming from the truck, looked through a crack between the rear doors of the vehicle and saw jugs of moonshine which he then seized. The agents had no warrant. The Bradshaw court held that, because the jugs of moonshine on the bed of the truck could not be seen except by someone who took the trouble to peer through the crack in the doors, and because the truck was on Bradshaw's private property, he had a reasonable expectation of privacy with respect to its contents, emphasizing that his ex-

pectation was enhanced because the vehicle was parked on his property. The Bradshaw court also noted that (as here), when the warrantless search was made, the truck was in the exclusive control of the agents (see United States v. Chadwick, 433 U.S. 1 (1977)) and officers were available to guard it while others went to get a warrant and there were no exigent circumstances requiring immediate search and seizure.

Nothing in this case suffices to overcome the strong presumption in favor of search warrants, or to supply circumstances which would dispense with the need for a warrant. Nevertheless, the District Court admitted the evidence, critical to Ramapuram's conviction, obtained in the warrantless search. Thereby, Ramapuram contends, it committed grave error, which was subsequently sanctioned by the Court of Appeals, and which should not be allowed to remain uncorrected. The

question involved, concerning proper application of Fourth Amendment protections to people's effects -- and a particularly critical aspect thereof, i.e. what constitutes a reasonable expectation of privacy in a Fourth Amendment context -- is of exceptional importance, and has not yet been fully dealt with or clearly delineated by this Court. It is sufficiently pervasive, affecting, as it potentially does, every citizen, and portentous, dealing, as it does, with a concept of personal freedom fundamental to our idea of ordered liberty, to require that it be settled by this Court.

2. With respect to the issue of the existence vel non of jurisdiction over Ramapuram in the prior juvenile case and hence in this criminal case:

The plain, unequivocal language of 18 U.S.C. 5032 mandates that a juvenile "shall not be proceeded against" in a United States court in a juvenile delin-

quency case unless the government certifies that "the juvenile court or other appropriate court of a State" "refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency." In the absence of such a certification, the juvenile involved is to be turned over to State authorities. In the prior juvenile case Ramapuram, in the words of the District Judge who denied his motion to dismiss, "has undeniably been 'proceeded against' in this court" (App. 82) for more than a year prior to the filing of any certification satisfying the requirement of Section 5032. Nevertheless the Court of Appeals, affirming the District Court, found such a subsequent certification to be timely. Thereby it rejected Ramapuram's assertion that proceedings had against him before the filing of a proper certification were invalid because, without a sufficient certification, the District Court

lacked jurisdiction to act against him.

The decision of the Court of Appeals was clearly erroneous, Ramapuram urges. That court held, following United States v. Cuomo, 525 F.2d 1285 (5th Cir. 1976), that the second certification, which was the only proper one, under Section 5032, filed in the case, since it was the only one based on the appropriate State court's refusal of jurisdiction over Ramapuram, was timely because filed prior to Ramapuram's indictment and arraignment in this (separate) adult criminal proceeding, which resulted from the District Court's granting, in the earlier juvenile delinquency proceeding, of the government's motion to transfer. (The Court of Appeals did not hold, as the District Court did, that the government's first certification, based only on the State's Attorney's refusal of jurisdiction, was sufficent under Section 5032.) Cuomo was the only case referred to by the Court of Appeals

in its opinion. Ramapuram knows of no other case which has undertaken to approach the problem presented. But, Ramapuram urges, Cuomo is readily distinguishable because the juvenile in Cuomo was not "proceeded against" prior to the filing of a proper Section 5032 certification, while Ramapuram "undeniably" was proceeded against, for more than a year in fact, before the "curative" certification was interposed. The distinction is a critical one.

Cuomo did not hold that a cure, by way of a subsequent, sufficient Section 5032 certification, can follow proceedings. Cuomo only held that:

> "Without deciding the latest possible time for filing, we hold that the filing of a proper certificate prior to arraignment before the district court in the case at bar was sufficient compliance with § 5032 to permit the proceedings against Cuomo to continue. While the provision obviously intends that deference be given state court juvenile processes where they are available, its phraseology requires no

abdication of federal jurisdiction to begin an action." (525 F.2d 1285, 1290) (Emphasis supplied.)

And, immediately prior to making that pronouncement, the Cuomo court was careful to point out that:

> "The statute does not expressly apply to the commencement of an action against a juvenile, nor may its certificate requirement reasonably be read as a condition precedent to the apprehension and detention of an alleged juvenile delinquent by federal criminal enforcement authorites and magistrates. The statute says that the alleged delinquent 'shall not be proceeded against in any court', that the certificate should be filed in 'an appropriate district court', and that '[i]f an alleged juvenile delinquent is not surrendered to authorities of the state or the District of Columbia pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States' (emphasis added)." (525 F.2d 1285, 1289-1290)

Cuomo, hence, appears not only to be limited to its own particular facts, but to hold merely that a Section 5032 certification is timely only if it is filed

before any proceedings are had against a juvenile in a district court, i.e. before he is "proceeded against", in the words of Section 5032, in such a court, and that simply commencing an action against a juvenile, as by the filing of a criminal complaint by the FBI, or the apprehension and detention of an alleged juvenile delinquent by federal authorites, 525 F.2d 1285, 1289, are not such proceedings as require for their validity prior compliance with the certification requirement of Section 5032. (All that the opinion in Cuomo discloses about the procedural facts of that case is as follows: Cuomo, who was 13 years old, was arrested for allegedly participating in a bank robbery. The arrest warrant was issued by a United States magistrate on a complaint filed by the FBI. Cuomo was held in federal custody for six days. Then he was released on bond, conditioned in part on his proper behavior in school. Thereafter he

was again arrested on a warrant issued by the magistrate for alleged violations of the bond. After he had again been confined for six days, the bond was reinstated. Later he was convicted of violating 18 U.S.C. 2113. The government filed two Section 5032 certificates in the case, one by an Assistant United States Attorney after Cuomo's second arrest and release and the second by the United States Attorney the day before trial.)

Cuomo clearly indicates that proceedings against a juvenile in a district court do require a prior Section 5032 certification to be valid. That "proceedings" were had against Ramapuram in the District Court prior to the filing of the only sufficient Section 5032 certificate (the second one) present in the case is acknowledged by that court. The subsequent, second certification could not save those proceedings. The court had

no jurisdiction to proceed against Ramapuram, in the face of Section 5032, unless and until a proper certification was filed. In failing to recognize and give effect to that circumstance the District Court committed egregious error, which was subsequently sanctioned by the Court of Appeals. The erroneous construction or application of Section 5032 by the lower courts should not be permitted to stand uncorrected. The question decided by the Court of Appeals in this cause is important and should be settled by this Court because its resolution potentially affects every juvenile delinquency proceeding brought or to be brought in any court of the United States. It goes to the heart of a vital function of federal courts, the exercise of their jurisdiction to deal with juvenile delinquency. It directly touches not only a substantial portion of the national population, viz. every juvenile resident

in this country, but a burgeoning problem, i.e. juvenile delinquency, which has become a major concern of the nation's criminal justice system. Moreover, the decision of the Court of Appeals appears to fly in the face of, or to totally ignore, the clear intent of Congress, in enacting the Juvenile Justice and Delinquency Prevention Act of 1974, as expressed in the pellucidly plain language of Section 5032 of that Act setting out the prerequisites to exercise of federal jurisdiction in juvenile delinquency cases.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

BENJAMIN LIPSITZ,
Attorney for Petitioner

January 5, 1981.

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 79-5051

United States of America,

Appellee,

v.

Lawrence David Ramapuram,

Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. C. Stanley Blair, District Judge.

Argued July 8, 1980

Decided October 9, 1980

Before BUTZNER, MURNAGHAN and ERVIN, Circuit Judges.

Benjamin Lipsitz for Appellant; Herbert Better, Assistant United States Attorney (Russell T. Baker, Jr., United States Attorney on brief) for Appellee.

MURNAGHAN, Circuit Judge:

A jury convicted Lawrence David Ramapuram under a one count indictment for violating 18 U.S.C. § 842(h).[1] The charge arose from a theft from a cemetery bunker of fifty pounds of dynamite. The principal issue raised on appeal is whether the district court erred in overruling Ramapuram's motion to suppress evidence allegedly obtained in violation of the Fourth Amendment prohibition of unreasonable searches and seizures.[2] Ramapuram also

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1 18 U.S.C. § 842(h) provides:

> It shall be unlawful for any person to receive, conceal, transport, ship, store, barter, sell, or dispose of any explosive materials knowing or having reasonable cause to believe that such explosive materials were stolen.

2 The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants

seeks reversal on the grounds that the district court erred in its instructions to the jury and in concluding that it had jurisdiction over the case.

I.

A.

Ramapuram, who was seventeen years old at the time, [3] together with a sixteen year old associate, Fisher, whose assistance Ramapuram sought and obtained, broke into the concrete cemetery bunker

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2 (Cont'd)
shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

3 On January 14, 1976, Ramapuram was arrested and charged by information with an act of juvenile delinquency pursuant to 18 U.S.C. § 5031 et seq. On February 11, 1976, with the aim of prosecuting Ramapuram as an adult, the United States moved the district court pursuant to 18 U.S.C. § 5032 to transfer the proceedings to its criminal docket. Prior to any action by the district court on the transfer request, the parties entered into a deferred prosecution

and removed the dynamite (approximately 100 sticks) on December 16, 1975. Cemetery employees discovered the theft a week later, on December 23, 1975, and reported the same to the Bureau of Alcohol, Tobacco and Firearms on December 24, 1975. Agent McMonagle of the ATF began an immediate investigation.

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3 (Cont'd)
agreement which provided for, inter alia, inpatient, and ultimately, outpatient psychiatric treatment for Ramapuram.

Upon Ramapuram's breach of several of the conditions contained in the deferred prosecution agreement, e.g., his admitted involvement in several violations of state law, including armed robbery, the government decided to pursue its § 5032 motion. After hearing, the district court granted the requested transfer and the trial on the subsequent indictment is that from which this appeal was noted. See United States v. Ramapuram, 432 F. Supp. 140 (D. Md. 1977), aff'd, 577 F.2d 738 (4th Cir.) (unpublished opinion), cert. denied, 439 U.S. 926 (1978). Ramapuram's jurisdicitonal attack on his conviction is founded on the alleged impropriety and inadequacy of the § 5032 transfer certification and on the then-pending appellate

The Maryland State Police also investigated the theft.

Recovery of most of the dynamite and Ramapuram's subsequent arrest resulted from a warrantless search and seizure which occurred under the following circumstances. Agent McMonagle received a report on New Year's Eve at or about 3:30 p.m. from a state police detective, Tenny, that Ramapuram and Fisher were responsible for the theft. Tenny received his information from his son, an acquaintance of Ramapuram and of Fisher, who was present near the cemetery on the night of the theft and who, in fact, had observed, with others Ramapuram and Fisher load the dynamite into Ramapuram's automobile. Detective Tenny also advised McMonagle that, ac-

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3 (Cont'd)
proceedings arising therefrom. It is urged that the then-pending appellate proceedings ousted the district court's jurisdiction in this case.

cording to the former's son, Ramapuram had expressed the intention to blow up certain public buildings. Later, on December 31, 1975, McMonagle learned that Fisher was in the custody of the Maryland State Police. McMonagle proceeded to the location where Fisher was being held and interviewed him. Sometime between 5:00 p.m. and 6:00 p.m. on the same day, December 31, 1975, Fisher told McMonagle that the dynamite was in the trunk of a Chevrolet automobile which was parked in a field on a farm located in Baltimore County, Maryland, and owned by Ramapuram's father, a medical practitioner. McMonagle, accompanied by another ATF agent and two state police troopers,[4] first went to the Ramapuram

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4 At the suppression hearing McMonagle stated he was accompanied by two state police troopers. At trial, on cross-examination, he stated that a second ATF agent was also in the car.

home to talk to Ramapuram's father, who, however, was not there. They then proceeded directly to the farm, arriving at or about 6:30 p.m.[5]

It was raining and dark as the vehicle containing the agents and troopers left the public road and entered the farm along a narrow private road. The vehicle advanced approximately two hundred yards from the public road whereupon it became mired in the mud. The district court found that the members of McMonagle's party:

> left their car and approached a

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5 There are contradictory indications in the record as to whether the visit to the Ramapuram residence preceded or followed the interview with Fisher. Whichever the case, our conclusion as to the pertinent legal questions would remain the same. It appears inescapable from the evidence that the visit to the Ramapuram residence occurred after the Fisher interview.

> Chevrolet automobile parked in an open area near a fenced paddock at a distance of 150 to 200 feet from the main road.
>
> The Agent observed that the car appeared to have been abandoned, that the license plates had expired, the doors were unlocked, and the trunk lock had been removed. The Agent opened the trunk of the car and found that it contained 88 sticks of dynamite which according to the 'date/shift code' was [sic] part of the dynamite stolen from Woodlawn Cemetery. The officers removed the dynamite from the premises and thereafter turned it over to military personnel to be taken to Edgewood Arsenal. The Chevrolet from which the dynamite was removed was titled in the name of the defendant's father but had been owned for the use of the defendant. Patarama Farm on which the Chevrolet was parked was owned by the defendant's father and the father's former wife. Neither the defendant nor his father lived on the farm but both had access to it and used it on occasion.

Dr. Ramapuram testified at the suppression hearing as well as at trial that the fifteen acre farm was used primarily to board and ride horses, by members of the Ramapuram family and others. At trial, he testified that the lone resi-

dence located on the farm was under lease to unspecified tenants. The 1964 Chevrolet automobile from which the dynamite was seized was described by the district court based on photos which are a part of the record as a "junker;" it was not the automobile driven by Ramapuram on the night of the theft.[6] Dr. Ramapuram testified that although the "junker" was titled in his name it had been held for use by and used by his son. Dr. Ramapuram could not remember when the "junker" was taken out of service and left on the farm. As the district court found, the "junker" had no current state license tags, the trunk lock assembly had been removed and the doors were unlocked.

It is undisputed that no search

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6 A search of the automobile used to transport the dynamite was undertaken pursuant to a warrant some weeks after the December 31, 1975 search of the "junker."

warrant was obtained and, indeed, that no effort whatsoever was made to determine the availability of a judge or magistrate to whom application could be made for such warrant. Likewise, it is apparently undisputed, as counsel for Ramapuram conceded at argument, that ample probable cause existed to support a search warrant for the "junker" after the McMonagle-Fisher interview.

At trial, aerial photographs of the pertinent area of the farm, close-up photographs of the "junker" and of the dynamite in the trunk, and McMonagle's testimony concerning the seizure were admitted. Additionally, findings from a chemical analysis of the recovered dynamite and testimony concerning the controlled detonation of the dynamite were admitted.

Over government opposition, the district court concluded that (a) Ramapuram had standing to raise the

Fourth Amendment contention; and (b) Ramapuram possessed a reasonable expectation of privacy as to matters stored in the trunk of the "junker". The district court, nevertheless, concluded that the warrantless search of the trunk of the "junker" was justified by exigent circumstances. The district court relied on several cases involving warrantless searches or seizures of explosives and weapons in varying circumstances.[7]

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7 United States v. Johnson, 467 F.2d 630, 639 (2d Cir. 1972), cert. denied, 413 U.S. 920 (1973) (sawed-off shotgun left in a suitcase in high crime area); United States v. McKinney, 477 F.2d 1184, 1186 (D.C. Cir. 1973) (shotgun in hotel room); United States v. Melville, 309 F. Supp. 829, 831 (S.D. N.Y.) (1970) (search of apartment for explosives possibly set to detonate). See Also the recent decision of this Court in United States v. Hensler, ___ F.2d ___ (4th Cir. 1980) (No. 79-5098, filed July 23, 1980) (marijuana in a grounded vessel).

In United States v. Hendrix, 595 F.2d 883, 886 (D.C. Cir. 1979) (per curiam) exigency was held to exist because the contraband (a shotgun) was threatened with imminent removal.

There are, however, cases concluding that prosecutorial assertions of exigency were insufficient to excuse compliance with the warrant requirement.[8]

Which of the two lines of cases to follow is a far from easy question to resolve. Nothing in the record sufficiently established a high volatility and grave potential of explosion for the dynamite abstracted from the cemetery bunker. Exigency is urged on the idea that, with approximately 100 sticks of dynamite actually in Ramapuram's possession, his threats to blow up public buildings made the urgency of a concentrated manhunt very great. However, if

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8 See, e.g., United States v. Bradley, 571 F.2d 787, 790 (4th Cir. 1978) (six hour delay in conducting search inconsistent with exigency claim); United States v. Presler, 610 F.2d 1206, 1214 (4th Cir. 1979) ("The officers had actual possession of the briefcase and should not have opened it without a warrant.")

it could be established that the dynamite was in the "junker" and, therefore, shielded from Ramapuram by the presence of law enforcement officers, the exigency of the search for him was reduced and might proceed more routinely.

In view of the existence of a more direct and established ground which validates the warrantless search and seizure, we expressly refrain from deciding whether such "exigency once removed" sufficed to render unnecessary a warrant in the present case. We note that United States v. McKinney, 477 F.2d 1184, 1186 (D.C. Cir. 1973), involved "a sawed-off shotgun, an ominous threat in and [of] itself." However, in the present case, the dynamite's risk is not simply inherent, but would depend on the particular destructive intent of Ramapuram. Cf. Mincy v. Arizona, 437 U.S. 385, 394 (1978) ("We decline to hold that the seriousness of the offense under investi-

gation itself creates exigent circumstances of the kind that under the Fourth Amendment justify a warrantless search.")

The alternate ground is our conclusion that Ramapuram had no reasonable expectation of privacy. While warrantless searches and seizures are presumptively unreasonable under the Fourth Amendment, Katz v. United States, 389 U.S. 347, 357 (1967), the thrust of the Fourth Amendment simply does not extend to locations lacking a foundation for reasonably expecting that the materials will be accorded privacy. Exploration by the government although without a warrant of non-private places does not compel the suppression of evidence so obtained. Rakas v. Illinois, 439 U.S. 128, 143 (1978); Id. at 150-56 (Powell, J., concurring); Rawlings v. Kentucky, 48 U.S.L.W. 4885, 4886-87 (U.S. June 25, 1980).

B.

In Patler v. Slayton, 503 F.2d

472, 477-78 (4th Cir. 1974), a federal habeas corpus attack on a state murder conviction,[9] one issue raised on appeal was the alleged impropriety under the Fourth Amendment of a search of a pasture located on a farm owned by Patler's father-in-law and the seizure therefrom of several spent bullets and shell casings matching the murder weapon. The district court held that in the absence of a reasonable expectation of privacy Patler had no standing and, therefore, could not raise the Fourth Amendment issue on federal habeas corpus. On appeal, this court disagreed with the lower court's determination that Patler lacked standing, relying on United States

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9 The decision by this court in Patler preceded the Supreme Court opinion in Stone v. Powell, 428 U.S. 465 (1976), which substantially reduced the federal courts' power to adjudicate Fourth Amendment claims of state prisoners on federal habeas corpus.

v. Cobb, 432 F.2d 716 (4th Cir. 1970), and Brown v. United States, 411 U.S. 223 (1973). We held, however, that Patler "failed to demonstrate a reasonable expectation of privacy in the property actually searched" and that, therefore, no violation of the Fourth Amendment had been made out. Subsequent teachings from the Supreme Court have clarified that in Patler both the lack-of-standing approach of the district court and the no-reasonable-expectation approach of the court of appeals were correct, and both sufficied as reasons for a denial of habeas corpus. This is so because, under Rakas v. Illinois, 439 U.S. 128 (1978), and Rawlings v. Kentucky, 48 U.S.L.W. 4885 (U.S. June 25, 1980), "the two inquiries [of standing and of substantive Fourth Amendment protection] merge into one: whether governmental officials violated any legitimate expectation of privacy . . . ." Rawlings v. Kentucky, 48 U.S.L.W. at 4887. The

Rawlings court might well have been speaking of Patler in stating "Prior to Rakas, petitioner might have been given 'standing' in such a case to challenge a 'search' that netted [the evidence] but probably would have lost his claim on the merits." Id. See United States v. Jackson, 585 F.2d 653, 660 (4th Cir. 1978) ("[W]ithout an [expectation of privacy] [defendant] had neither standing nor a right to complaint.").

As we perceive the relevant principles, it devolves upon one seeking suppression of incriminating evidence to establish as a threshhold matter the existence of a reasonable expectation of privacy in the area searched. United States v. Torch, 609 F.2d 1088, 1091 (4th Cir. 1979) ("The test for whether a person may have evidence obtained in an unlawful search and seizure suppressed is whether the person had 'a reasonable expectation of freedom from government

intrusion in the invaded place'."). In many cases such a showing will be readily achieved. Arkansas v. Sanders, 442 U.S. 753, 762 (1979) ("[L]uggage is a common repository for one's personal effects, and therefore is inevitably associated with the expectation of privacy."); United States v. Presler, 610 F.2d 1206, 1213-14 (4th Cir. 1979) ("The very act of locking them and retaining either the key or the combination to the locks on the two briefcases was an effective expression of the defendant's expectation of privacy."). In other cases, it will be all but impossible to demonstrate a reasonable expectation of privacy, even where the movant is the owner of the property searched. United States v. Dall, 608 F.2d 910, 914 (1st Cir. 1979), cert. denied, ___ U.S. ____ (1980) ("Ownership alone is not enough to establish a reasonable and legitimate expectation of privacy. Ownership is relevant to the

inquiry . . ., but the total circumstances determine whether the one challenging the search has a reasonable and legitimate expectation of privacy in the locus of the search."); United States v. Rios, 611 F.2d 1335, 1345 (10th Cir. 1979).

"What is a reasonable expectation of privacy is by definition related to time, place and circumstance." United States v. Vicknair, 610 F.2d 372, 380 (5th Cir. 1980). Considerable guidance is afforded by several Supreme Court cases. In short:

> the application of the Fourth Amendment depends on whether the person involing its protection can claim a "justifiable," a "reasonable," or a "legitimate expectation of privacy" that has been invaded by government action. E. g., Rakas v. Illinois, 439 U.S. 128, 143, and n. 12 (1978); id., at 150, 151 (concurring opinion); id., at 164 (dissenting opinion); United States v. Chadwick, 433 U.S. 1, 7 (1977); United States v. Miller, 425 U.S. 435, 442 (1976); United States v. Dionisio, 410 U.S. 1, 14 (1973); Couch v. United States, 409 U.S. 322, 335-336

> (1973); United States v. White, 401 U.S. 745, 753 (1971) (plurality opinion); Mancusi v. DeForte, 392 U.S. 364, 368 (1968); Terry v. Ohio, 392 U.S. 1, 9 (1968). This inquiry, as Mr. Justice Harlan aptly noted in his Katz concurrence, normally embraces two discrete questions. The first is whether the individual, by his conduct, has "exhibited an actual (subjective) expectation of privacy," 389 U.S., at 361--whether, in the words of the Katz majority, the individual has shown that "he seeks to preserve [something] as private." Id., at 351. The second question is whether the individual's subjective expectation of privacy is "one that society is prepared to recognize as 'reasonable,'" id., at 361--whether, in the words of the Katz majority, the individual's expectation, viewed objectively, is "justifiable" under the circumstances. Id., at 353. See Rakas v. Illinois, 439 U.S., at 143-144, n. 12; id., at 151 (concurring opinion); United States v. White, 401 U.S., at 753 (plurality opinion).

Smith v. Maryland, 442 U.S. 735, 740 (1979) (footnote omitted).

C.

At the outset, we agree with the Court of Appeals for the Fifth Circuit that a lower court's determination that a reasonable expectation of privacy does

or does not exist "is a legal conclusion involving substantive Fourth Amendment analysis . . . subject to full review by this court." United States v. Vicknair, 610 F.2d 372, 379 (5th Cir. 1980). Accordingly, the district court's statement that "[O]ne normally has a justifiable expectation of privacy in the trunk of one's car, no matter where it is parked," is not insulated by the clearly erroneous standard of review. Underlying facts supportive of the district court's legal conclusion are, of course, so insulated.

We assume that Ramapuram had an actual subjective expectation of privacy in the trunk of the "junker." He firmly desired to keep secret any item placed there, particularly the dynamite.

We do not conclude, however, that Ramapuram's actual expectation of privacy was legitimate or reasonable or justifiable. First, the district court found and concluded that the "junker" was lo-

cated in an open field. See Hester v. United States, 265 U.S. 57 (1924); Johnson v. United States, 333 U.S. 10 (1948); United States v. Brown, 487 F.2d 208 (4th Cir. 1973) (per curiam), cert. denied, 416 U.S. 909 (1974). Under the doctrine of Hester, no Fourth Amendment protection extends to open fields. Accordingly, for example, if the object of McMonagle's search had been the "junker" itself, rather than the contents of the "junker's" trunk, then Ramapuram clearly would not be heard to complain of the trespass by McMonagle to ascertain the identity of an auto immobilized where the "junker" was immobilized. Counsel for Ramapuram has concentrated his argument on the difference between the altogether visible exterior of the "junker" and the concealed interior of the trunk. His position encompasses the point that the dynamite was enclosed in the "junker" itself rather than left un-

covered in high grass or in a tree, cf. Patler v. Slayton, 353 F. Supp. 376, 383 (E.D. Va. 1973), aff'd 503 F.2d 472 (4th Cir. 1974). The thrust of counsel's argument is that the covered, closed character of the junker's trunk foreclosed any right to open it. The district court agreed. See also United States v. Diaz-Segovia, 457 F. Supp. 260, 268-70 (D. Md. 1978). But see Cady v. Dombrowski, 413 U.S. 433, 449-50 (1973) (specifically leaving the question open as to back seat of automobile in open field). It is sufficient here to observe that whatever expectation of privacy attends a closed but unsecured "effect" generally is diminished where the "effect" itself is placed in an area totally without the protection of the Fourth Amendment such as in an open field. United States v. Jackson, 585 F.2d 653, 658-59 (4th Cir. 1978). See United States v. Williams, 581 F.2d 451, 453 (5th Cir. 1978), cert. denied, 440

U.S. 972 (1979) ("Although the expectations of privacy test has done away with outmoded property concepts no longer satisfactory for fourth amendment analysis . . . the distinction between open fields and curtilage is still helpful in determining the existence or not of reasonable privacy expectations."); cf. United States v. Alewelt, 532 F.2d 1165, 1168 (7th Cir.), cert. denied, 429 U.S. 840 (1976) (privacy expectations as to the pockets of a jacket diminished where jacket left on coat rack in "general work area").

Second, although we agree with the district court that the "automobile exception" is inapplicable to this case,[10]

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10 There is no reason to treat this as an automobile case justifying the warrantless search of the "junker." Cf. United States v. Newbourn, 600 F.2d 452 (4th Cir. 1979). The "junker" was not functioning as a vehicle capable of transporting people or property. The government does not challenge that aspect of the district court's holding.

nevertheless, we cannot ignore the fact that it was an automobile that was searched. Courts have long recognized the lessened expectation of privacy attendant to an automobile. Cf. United States v. Newbourn, 600 F.2d 452, 454, 457-58 (4th Cir. 1979); United States v. Torch, 609 F.2d 1088, 1091 n.3 (4th Cir. 1979). Accordingly, we decide on the basis of the actual characteristics of the container before us, and not on the basis of different kinds of containers which may present themselves in other cases.[11] Nor need we determine whether the automobile was abandoned in any constitutional sense. But see United States v. Wilson, 472 F.2d 901, 902 (9th Cir. 1972).

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11 [A]s the Supreme Court has recognized, evidence properly obtained in one case should not be excluded as a protest against the ever present possibility of abuse of evidence gathering techniques in another, hypothetical, case.

United States v. Vasquez, 612 F.2d 1338, 1346 (2d Cir. 1979).

Third, despite Ramapuram's general rights of dominion over his own property, the question is not thereby answered. It remains a question of whether, regardless of the state of ownership,[12] he had a reasonable expectation of privacy. Rawlings v. Kentucky, 48 U.S.L.W. 4885 (U.S. June 25, 1980). Ramapuram failed to secure the trunk of the "junker" and, indeed, could not have done so in the normal manner by locking it inasmuch as the lock assembly had been earlier removed. "The character of the invaded place is clearly important." United States v. Torch, 609 F.2d at 1091 n.3. Ramapuram did not live on the farm where the "junker" was located; accordingly, however much such a factor might augment the abstract right to exclude, such augmentation is not

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12 Legal title to the "junker" was in Ramapuram's father. Still it was acquired for use by the son, and we regard him as the owner for the purposes of this discussion.

present here. Cf. Torch, 609 F.2d at 1091 (Absence at the time of the search diminished the strength of an expectation of privacy). The residence on the farm was leased to others. Additionally, the farm was used with permission by persons who were neither members of the Ramapuram family nor residents on the farm. It is, of course, true that a sharing of premises does not by itself dissipate the reasonable expectations of privacy of those with joint control over the premises.[13] Here however, Ramapuram's possessory interest in the farm and "junker" was sufficiently lessened to compel the judgment that he could not legitimately expect that the contents of the unlocked trunk of the "junker" situated in an open field would remain secure from prying eyes, irrespective of whether those eyes were private or governmental. Cf.

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13 Mancusi v. DeForte, 392 U.S. 364, 369 (1968).

United States v. Vicknair, 610 F.2d at 380.

As to the stolen dynamite, Ramapuram did not take "precautions customarily taken by those seeking privacy." Rakas v. Illinois, 439 U.S. at 152-53 (Powell, J., concurring). No testimony established that the "junker" was used by Ramapuram or members of his family for storage of personal effects or any other significant purpose. Cf. United States v. Basile, 569 F.2d 1053, 1959 (9th Cir. 1978) (Hufstedler, J., dissenting). Neither Ramapuram's possessory interests nor his correlative but unadorned right as the owner to exclude others, under the circumstances of this case, are sufficient to raise his actual expectations of privacy to a level of constitutional legitimacy. See United States v. Vicknair, 610 F.2d at 381.

Taking the above considerations in combination, and whether the conclusion

is cast in terms of Ramapuram's standing or on the basis that McMonagle's lifting of the trunk lid of the "junker" and his perusal of its contents did not constitute a "search" within the contemplation of the Fourth Amendment, it suffices to hold that no privacy interest protected by the Fourth Amendment was invaded and that therefore no proper case for the application of the exclusionary rule has been made out.

II.

Ramapuram asserts error in the trial court's refusal to instruct the jury as to the meaning of the word "substantial" in its instructions on the insanity defense and in the court's like refusal to instruct the jury that "criminality" of conduct in the federal insanity test means moral rather than criminal wrongfulness. Counsel, at oral argument, having, we think, sensibly withdrawn from our consideration the latter issue, we

determine that the former is also lacking in merit. Language is by its very nature an approximation. In any search for absolutism in conveyance of a meaning, each addition of words by way of definition of words already employed only invites demand for further clarification of additional words introudced as part of the definition.

Of course, a demand for specificity where words employed are inherently unclear or ambiguous, may well be justified. However, reading the district court's charge in its entirety demonstrates that the trial judge made readily comprehensible to the jury what the significance was of the words utilized: "substantial capacity." There is no showing here that the jury failed to understand or properly to apply the trial court's insanity charge. See United States v. Butler, 409 F.2d 1261 (4th Cir. 1969).

III.

In United States v. Ramapuram, 432 F. Supp. 140 (D. Md. 1977), aff'd, 577 F.2d 738 (4th Cir.) (unreported), cert. denied, 439 U.S. 962 (1978), we affirmed the district court's holding that the government timely filed its second certification, pursuant to 18 U.S.C. § 5032, to the effect that the state juvenile court refused to assume jurisdiction over the case against Ramapuram. We have no occasion to re-examine that decision.

Finally, we think the contention that the pendency of the appellate proceedings in the juvenile case ousted the district court's jurisdiction under the instant indictment lacks merit. They were separate and distinct proceedings.

AFFIRMED.

ERVIN, Circuit Judge, dissenting:

I respectfully dissent because I believe that the majority erred in failing to grant Ramapuram's motion to suppress evidence allegedly seized in violation of the Fourth Amendment. The Fourth Amendment prohibits unreasonable searches and seizures of "persons, houses, papers, and effects." It is undisputed that the recovery of most of the dynamite resulted from a warrantless search and seizure by state and federal law enforcement officers.

In order to protect the privacy of a citizen against arbitrary invasions by government officials, the Supreme Court has expressed a strong preference that law enforcement officers secure search warrants prior to searching private property. See, e.g., Camara v. Municipal Court, 387 U.S. 523, 528-29 (1967); Johnson v. United States, 333 U.S. 10, 13-15 (1948). The warrant procedure is

designed to interpose the judgment of probable cause by a detached neutral judicial officer between the citizen and the police. By requiring that the decision of probable cause to search be made by a neutral judicial officer prior to the search, the citizen is protected from the hurried decision made by someone engaged "in the often competitive enterprise of ferreting out crime." Johnson v. United States, 333 U.S. 10, 14 (1948). Because of the strong preference in favor of search warrants, there is a presumption that a warrantless search of private property is per se unreasonable, unless the search falls within one of the clearly delineated exceptions to the warrant requirement. Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); Mancusi v. DeForte, 392 U.S. 364, 370 (1968); Katz v. United States, 389 U.S. 347, 357 (1967). The majority has made no attempt to conclude that the search of Ramapuram's

property fell within one of the clearly delineated exceptions,[1] and thus has not overcome the presumption that the warrantless search of Ramapuram's property was per se unreasonable.

Whether a search and seizure is actually unreasonable depends on the facts and circumstances of each case. Cooper v. California, 386 U.S. 58, 59 (1967). The ultimate test of the reasonableness of a warrantless search, however, is whether property was searched in which the complainant had a reasonable expectation of privacy from governmental intrusion. Katz v. United States, 389 U.S. 347 (1967). I strongly disagree with the majority's conclusion that Ramapuram had no reasonable or justifiable expectation of privacy in the trunk of the

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[1] The majority found that the automobile exception was inapplicable. Furthermore, the majority refused to find that exigent circumstances were present that justified a warrantless search.

"junker" car found on the premises of the family's farm.[2]

The majority focuses on several factors that allegedly lessened Ramapuram's expectation of privacy. One such factor is that Ramapuram's car was found in an open field, an area seemingly outside the protection of the Fourth Amendment. In Hester v. United States, 265 U.S. 57 (1924), the case in which the open field exception was recognized by the Supreme Court, revenue officers ventured on property belonging to Hester's father. While on the property, the officers observed Hester and an associate engaged in a transaction in-

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[2] Whether this case was decided on standing grounds or on the grounds that the search was unreasonable is unclear. As indicated by the majority opinion, the test in either situation is whether the complaining party had a reasonable expectation of privacy. See, e.g., Rakas v. Illinois, 439 U.S. 128 (1978); Katz v. United States, 389 U.S. 347 (1967).

volving illegal liquor. The officers pursued Hester after the transaction, and during the pursuit, Hester dropped a jug of the illegal liquor on his father's premises, which broke the jug. The revenue officers examined the jug and its contents. Over Hester's objection, the Court upheld the inspection noting that the acts of Hester and his associates disclosed the jug and that there was no seizure when the officers examined the jug after it had been abandoned. Id. at 58. The Court further commented that the protection of the Fourth Amendment does not extend to open fields. Id. at 59. The application of Hester remains unclear. Hester has been cited frequently by the Supreme Court in support of the plain view doctrine. See, e.g., Air Pollution Variance Board v. Western Alfalfa Corp., 416 U.S. 861, 865 (1974) (smoke emitted from chimney seized); Coolidge v. New Hampshire, 403 U.S. 443,

465 (1971); Harris v. United States, 390 U.S. 234, 236 (1968); accord, McDowell v. United States, 383 F.2d 599 (8th Cir. 1967) (identity of persons coming from field and samples of corn and millet seized). Cf. United States v. Brown, 487 F.2d 208 (4th Cir. 1973)(per curiam), cert. denied, 416 U.S. 909 (1974)(ATF agents entered onto the defendant's premises and detected smell of fermentation. Such detection used to obtain search warrant, and detection upheld under open field doctrine); accord, United States v. Williams, 581 F.2d 451 (5th Cir. 1978), cert. denied, 440 U.S. 972 (1979). The open field exception, however, has not been used by the courts as a license for a police officer to enter and search an object or effect in an open field, the contents of which are secluded from his view. See, e.g., United States v. Brown, 487 F.2d 208 (4th Cir. 1973) (per curiam), cert. denied, 416 U.S. 909

(1974)(barn); United States v. Williams, 581 F.2d 451 (5th Cir. 1978)(shed), cert. denied, 440 U.S. 972 (1979). But see United States v. Basile, 569 F.2d 1053 (9th Cir.), cert. denied, 436 U.S. 920 (1978)(officer allowed to peer into window of immobile van). Cf. United States v. Diaz-Segovia, 457 F.Supp. 260, 270 (D.Md. 1978)(officers may trespass on private property for surveillance as long as they do not search house or curtelage or peer into enclosed buildings or vehicles). In light of other courts' interpretations of Hester, a visual search of the exterior of the car and other parts in plain view to an officer in the field should be distinguished from a search of the enclosed trunk. The former may be searched without a warrant, whereas the latter should not be.

Since Hester, moreover, the Supreme Court has turned its focus in search and seizure cases away from the concept of

constitutionally protected and unprotected places. See Katz v. United States, 389 U.S. 347, 351 (1967). Instead, the Court has directed its attention to persons and to what they seek to preserve as private. Id. Thus, in light of Katz, the validity of a blanket exclusion of an open field from Fourth Amendment protection is, at best, questionable. See Wattenburg v. United States, 388 F.2d 853 (9th Cir. 1968). Cf. United States v. Minton, 488 F.2d 37 (4th Cir. 1973)(per curiam), cert. denied, 416 U.S. 936 (1974)(focus on reasonable expectation of privacy in search and seizure cases is more important than real property concepts); accord, Patler v. Slayton, 353 F.Supp. 376 (E.D.Va. 1973), aff'd, 503 F.2d 472 (4th Cir. 1974).

The Supreme Court in Katz distinguished that which a person knowingly exposes to the public from that which a person seeks to preserve as private, even in an area accessible to the public. The

former is not subject to Fourth Amendment protection from unreasonable search and seizure, whereas the latter may be protected. 389 U.S. at 351. Clearly, as even the majority recognizes, Ramapuram sought to keep private any item placed in the trunk of the "junker" located on his family's property.

I cannot see how Ramapuram's reasonable expectation of privacy was diminished by parking his junker car in an area on his family's private farm. The rural character of the area should have some bearing on Ramapuram's expectation of privacy. Unlike an urban dweller, whose activities and effects are more likely to be viewed by the casual passerby, the rural dweller reasonably can expect more privacy concerning his activities and his effects if his premises are far removed from the public road. See United States v. Holmes, 521 F.2d 859, 870 (5th Cir. 1975), on rehearing, 537 F.2d 227 (5th

Cir. 1976). In order to reach the junker the agents had to proceed down a farm road[3] and across the Ramapuram property for a considerable distance from the public road. Ramapuram clearly did not knowingly expose his junker car to the public when the car was left on the premises of his farm at a distance of between 150 to 200 feet from the main road. Ramapuram's placement of the car is not comparable to the placing of a jacket on a coat rack in a general work area visible to any casual passerby, United States v. Alewelt, 532 F.2d 1165 (7th Cir.), cert. denied, 429 U.S. 840 (1976), or to leaving a car parked along a public road. United States v. Newbourn, 600 F.2d 452 (4th Cir. 1979). Furthermore, Ramapuram had a property interest in the farm by virtue of his family's ownership of the

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[3] The testimony in the record conflicts on whether the farm road was public or private.

premises. Although ownership alone may be insufficient to establish a reasonable expectation of privacy, it is nevertheless a relevant inquiry, United States v. Dall, 600 F.2d 910, 914 (1st Cir. 1979), cert. denied, ___ U.S. ____, 100 S. Ct. 1280 (1980), and promotes a more reasonable expection of privacy than that of someone who has no possessory or property interest in the searched property, United States v. Jackson, 585 F.2d 653 (4th Cir. 1978)(no reasonable expectation of privacy in property stored in a vacant house in which the defendant had no possessory or property interest).

A second factor that the majority considers as diminishing Ramapuram's expectation of privacy is that the item searched was a car. Yet, the majority at all times refers to Ramapuram's vehicle not as a car but as another effect, a "junker." Thus, the majority does not and indeed cannot justify its decision by

treating the "junker" as a car falling within the automobile exception to the search warrant. The problem that remains, therefore, is that the majority has not adopted any other justification for the warrantless search. Furthermore, even though there may be a lesser expectation of privacy in a car than in a dwelling, see South Dakota v. Opperman, 428 U.S. 364 (1976), the degree of such lesser expectation is not clear. This court has spoken of the lesser expectation of privacy in an automobile in terms of the motorist operating his vehicle on public streets and highways. United States v. Newbourn, 600 F.2d 452 (4th Cir. 1979). Clearly, this is not such a situation. Certainly, a car, as an effect, is afforded some Fourth Amendment protection from unreasonable searches and seizures. See, e.g., United States v. Chadwick, 433 U.S. 1, 12 (1977); Cady v. Dombrowski, 413 U.S. 433 (1973). Moreover, there is

some indication that there may be a more reasonable expectation of privacy in the interior and trunk of the car than there is in the exterior parts. See, e.g., Cardwell v. Lewis, 417 U.S. 583, 591 (1971) (authorizing warrantless examination of exterior of car while noting that there may be some interior parts of the car subject to Fourth Amendment protection); United States v. Holmes, 521 F.2d 859 (5th Cir. 1975) (dicta), on rehearing, 537 F.2d 227 (5th Cir. 1976) (person may complain if police without probable cause or the existence of exigent circumstances break into his car and seize objects hidden in the trunk or glove compartment); United States v. Brown, 457 F.2 731 (1st Cir. 1972), cert. denied, 409 U.S. 843 (1973). Even if there is a lesser expectation of privacy in an automobile than in a dwelling, such lesser expectation without other compelling circumstances does not author-

ize a warrantless search of Ramapuram's trunk parked on his private property. Coolidge v. New Hampshire, 403 U.S. 443 (1971).

In addition to relying on the open field exception and the characterization of the item searched as a car as diminishing Ramapuram's expectation of privacy, the majority considers other lessening factors. The majority focuses on the absence of a lock on the trunk of Ramapuram's car. A repository of personal belongings is not outside the protection of the Fourth Amendment merely because it does not have a lock to secure it. See Arkansas v. Sanders, 442 U.S. 753 (1979)(warrantless search of unlocked suitcase in trunk of taxicab reasonable). Cf. United States v. Bradshaw, 490 F.2d 1097 (4th Cir.), cert. denied, 419 U.S. 895 (1974)(unreasonable search to peer through space between the edges of truck doors that did not fit

together properly). There may be less need for a lock to protect effects on private property than in a public airport or in the back of a taxicab. It is not persuasive, moreover, that Ramapuram did not reside permanently on the premises searched since the district court concluded that Ramapuram used the farm frequently although the premises were leased to others. Although such factors may have lessened Ramapuram's expectation of privacy, I am not persuaded that such factors viewed together extinguished any reasonable expectation of privacy that Ramapuram had in the trunk of his "junker" parked on his family's farm.

Furthermore, I cannot ignore, as the majority appears to have done, the strong presumption that a warrantless search of personal property is per se unreasonable. Katz v. United States, 389 U.S. 347, 357 (1967). I am not convinced that there was sufficient reason

to dispense with a warrant in this case. The facts in this case are analogous to those in United States v. Bradshaw, 490 F. 2d 1097 (4th Cir.), cert. denied, 419 U.S. 895 (1974). In Bradshaw, an Alcohol, Tobacco and Firearms agent and two state police officers, suspecting the defendant of distilling liquor, proceeded to the vicinity of the defendant's residence to search for a still in the fields adjacent to the defendant's property. While searching the adjacent fields, the officers detected the smell of whiskey emanating from a seemingly abandoned vehicle located beyond the boundaries of the defendant's property beside an acess road leading to defendant's residence. The officers and agent went to defendant's residence to ask him if he knew anything about the abandoned vehicle. When the defendant failed to answer the front door, the agent decided to try the back door. En route to the rear of the house, the

agent discovered a 1952 truck parked near the house. The truck had sideboards and swinging rear doors so that the casual glance of a passerby would not have discovered whatever may have been resting on the bed of the truck. When the agent detected the smell of whiskey coming from the truck, he peered through a crack in the doors at the rear of the truck and saw a large number of jugs containing white liquid. The agent entered the truck without a warrant, ascertained that the jugs contained moonshine and seized the jugs. The court held that because the objects on the bed of the truck could not be viewed except by someone who took special pains to peer through the crack and because the truck was on the defendant's premises near his residence, the defendant had a reasonable expectation of privacy with respect to the contents of the truck bed. The court further emphasized that defendant's expectation

of privacy with respect to the contents of the truck was enhanced because the vehicle was parked on the defendant's property. Id. at 1103. Similarly, Ramapuram's junker was on his private rural property and the contents of the trunk were not visible to the casual passerby. The court in Bradshaw noted that there were no circumstances that would work to dispense with the necessity of obtaining a warrant prior to searching the truck. The court concluded that two agents could have guarded the truck while the third obtained a warrant. Similarly in Ramapuram's situation, there was no need to dispense with obtaining a warrant prior to searching Ramapuram's trunk. As in Bradshaw, there were a sufficient number of agents to stand guard while the others went to obtain a warrant. The car was in the exclusive contol of the agents, see United States v. Chadwick, 433 U.S. 1 (1977); United States v.

Johnson, 588 F.2d 147 (5th Cir. 1979), and there were no exigent circumstances supporting the need for an immediate search or seizure.

In light both of the strong presumption in favor of search warrants and of the lack of circumstances which would mandate dispensing with a warrant, I conclude that the search and seizure of Ramapuram's property was unreasonable. The evidence obtained as a result of the search, therefore, should have been suppressed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	:	(Filed 10/27/78)
vs.	:	CRIMINAL NO. B-77-0287
LAWRENCE DAVID RAMAPURAM	:	

MEMORANDUM AND ORDER

On September 29, 1978, this court held a hearing on several motions filed by the defendant. At the hearing, several of the motions were mooted by the government's undertaking to provide information requested and the government's representation that certain information requested did not exist. Other motions were denied at the hearing for reasons then stated.

At the close of the hearing, the court did not finally rule on defendant's (1) Motion to Suppress Evidence and (2)

Motion to Dismiss the Indictment for alleged violations of the Interstate Agreement on Detainers Act. Counsel were subsequently advised orally that both motions would be denied. The defendant has since been tried and convicted. The court now sets forth its reasons for denying the two motions not disposed of at the hearing.

I. Motion to Suppress Evidence

Defendant moves to suppress all evidence obtained as a result of a warrantless search by Special Agent McMonagle (the Agent), of the Bureau of Alcohol, Tobacco and Firearms, of a 1964 Chevrolet. The Agent had been assigned to investigate the theft from Woodlawn Cemetery of some fifty pounds of dynamite which occurred on December 16, 1975. At approximately 3:00 p.m. on New Year's Eve 1975, the Agent was informed by a friend who was a detective with the Baltimore County Police Department that

the detective had learned through his son that the defendant, aided by one Michael Fisher, had stolen the dynamite, concealed it at a certain location and had expressed an intention to use it to blow up certain buildings. The Agent was informed by the detective that the Maryland State police were also investigating the theft. The Agent first sought to locate the defendant's father, a prominent physician, and was advised by someone at the father's residence that the doctor and the defendant's whereabouts were unknown. The Agent also learned that Michael Fisher was in the custody of the state police and he then proceeded to the state police barracks to interview Fisher. From that interview the Agent learned that the dynamite was concealed in the trunk of an abandoned Chevrolet automobile located at Patarama Farm owned by the defendant's father and located in Baltimore County.

The Agent and two state policemen proceeded immediately to Patarama Farm and arrived there at approximately 6:30 p.m. It was then dark and raining heavily. The officers entered the farm road and proceeded past what appeared to be a house and a barn for approximately 200 yards until their car became mired in the mud. They left their car and approached a Chevrolet automobile parked in an open area near a fenced paddock at a distance of 150 to 200 feet from the main road.

The Agent observed that the car appeared to have been abandoned, that the license plates had expired, the doors were unlocked, and the trunk lock had been removed. The Agent opened the trunk of the car and found that it contained 88 sticks of dynamite which according to the "date/shift code" was part of the dynamite stolen from Woodlawn Cemetery. The officers removed the dynamite

from the premises and thereafter turned it over to military personnel to be taken to Edgewood Arsenal. The Chevrolet from which the dynamite was removed was titled in the name of the defendant's father but had been owned for the use of the defendant. Patarama Farm on which the Chevrolet was parked was owned by the defendant's father and the father's former wife. Neither the defendant nor his father lived on the farm but both had access to it and used it on occasion.

The first question is whether the defendant has standing to challenge the search. The court concludes that he does.

The circumstances of the search and seizure in this case are similar to those in Patler v. Slayton, 503 F.2d 472, 477-78 (4th Cir. 1974). In that case the Court of Appeals for the Fourth Circuit held that an individual had standing to assert his fourth amendment rights in a number of spent bullets and shell casings

seized from a pasture on a farm owned by his father-in-law, and used occasionally by the two families as a picnic area. The court found that the defendant had a possessory interest in the farm property searched, citing Brown v. United States, 411 U.S. 223, 229 (1973), and that the search was directed against him. These two facts were sufficient to accord the defendant standing to challenge the search. Id. at 477-78, citing United States v. Cobb, 432 F.2d 716, 719 (4th Cir. 1970).

In the instant case, as in Patler, the defendant had a possessory interest in the place searched. The evidence is that although not residing on the farm the defendant as well as his father used the farm for recreational purposes with some frequency. Similarly, the evidence warrants the conclusion that although the Chevrolet was titled in the name of the defendant's father it was

for all intents and purposes owned by the defendant. Moreover, it is at least arguable that the search was "directed at" the defendant. Although the Agent's testimony indicates that the search was solely for the purpose of securing the dynamite, he was aware that the defendant was the alleged thief and had concealed the dynamite in the discarded Chevrolet.

From these facts, the court concludes that the defendant's interest in the farm property and the Chevrolet automobile coupled with the evidence that the search and seizure were directed against him are sufficient to grant him standing to challenge the constitutionality of the Agent's actions. It is irrelevant that in this case possession is not an essential element of the offense. Patler, supra at 478.

The next question is whether the defendant had a legitimate expectation of privacy in the trunk of the Chevro-

let. See Patler, supra at 478. The government appears to contend that the search and seizure in this case fall within the "open fields" doctrine of Hester v. United States, 265 U.S. 57, 59 (1924), since the agents apparently believed the car to be abandoned in an outlying field when they approached in the dark along the unpaved farm road. Although "open fields" around barns and similar outbuildings have been held not to be constitutionally protected areas, see Hester, supra at 59; United States v. Brown, 487 F.2d 208, 210 (4th Cir. 1973), cert. denied, 416 U.S. 909 (1974), automobiles are "effects" within the reach of the fourth amendment. Cady v. Dombrowski, 413 U.S. 433, 439 (1973); United States v. Peisner, 311 F.2d 94, 101 (4th Cir. 1962). One normally has a justifiable expectation of privacy in the trunk of one's car, no matter where it is parked. Cady, supra at 442, note. Al-

though the "open fields" doctrine suggests that the agents' "trespass" onto the farm property might not be per se constitutionally vulnerable, that doctrine is of no avail to justify the search of the automobile trunk. See United States v. Bradshaw, 490 F.2d 1097, 1103 (4th Cir. 1974), cert. denied, 419 U.S. 895 (1974).

The fourth amendment prohibits only unreasonable searches and seizures. Carroll v. United States, 267 U.S. 132, 147 (1925). A search without a warrant is per se unreasonable, subject to a few well-delineated exceptions. Katz v. United States, 389 U.S. 347, 357 (1967). It has been recognized since Carroll, supra, that there may arise certain exigent circumstances under which it is not reasonable to obtain a warrant. Under these circumstances, a search supported by probable cause may be effected without a warrant.

The "exigent circumstances" exception is most commonly applied to searches and seizures executed with haste to avoid moving, disposal or destruction of evidence. See, e.g., Carroll, supra at 153 (danger that contraband would be moved);[1] Preston v. United States, 376 U.S. 364, 367 (1974) (no danger that suspects, once arrested, would move or destroy evidence); Schmerber v. California, 384 U.S. 757, 770-71 (1966) (danger that evidence of blood-alcohol would dissipate spontaneously with the passage of time). The

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[1] This court sees no reason to treat this as an automobile search case. The fact that the dynamite was stored in an abandoned automobile is of minimal constitutional significance. There is no evidence that the car was likely to be moved; on the contrary, the Agent testified that the car was in a virtually identical state when he returned to the farm to photograph it two months after the search and seizure and the defendant's father testified that he did not recall when the car was last driven. The receptacle could as easily have been a box or a trunk. Coolidge v. New Hampshire, 403 U.S. 442, 461 n.18 (1971)

"stop and frisk" exception to the warrant requirement, Terry v. Ohio, 392 U.S. 1, 27 (1968), is closely related to the "exigent circumstances" exception. The Terry exception permits a police officer to make a limited search for weapons in the absence of probable cause to arrest where the officer has a reasonable and articulable belief that his safety or that of others is endangered. Id. at 27. See also United States v. Miller, 468 F.2d 1041, 1045 (4th Cir. 1972), cert. denied, 410 U.S. 935 (1973) (search of handbag and seizure of handgun held reasonable where marshals had reason to suspect defendant might try to effect her husband's escape from courtroom).

The "exigent circumstances" exception has been applied in cases where the property seized presented a grave danger either to the police or to the general public. In United States v. Johnson, 467 F.2d 630, 639 (2nd Cir. 1972), cert.

denied, 413 U.S. 920 (1973), the police received a tip that a sawed-off shotgun could be found in a suitcase left near the rear door of an apartment building in a known transient and high crime area. The Second Circuit held that the warrantless search and seizure of the suitcase was not violative of the fourth amendment, since the "exigencies of the situation made that course imperative," id. at 639, citing McDonald v. United States, 335 U.S. 451, 456 (1948). The court further stated that under the circumstances it was not required that the police guard the closed suitcase until a warrant could be obtained to open it: "their own safety and the safety of others required that they know whether they were holding a dangerous weapon over which they had no control." Johnson, supra at 639.

In United States v. McKinney, 477 F.2d 1184, 1186 (D.C. Cir. 1973), the Court of Appeals for the District of

Columbia held the warrantless entry of a hotel room and subsequent seizure of a sawed-off shotgun to be justified by exigent circumstances. The court stated that the weapon in and of itself posed an obvious danger to the community.

In United States v. Melville, 309 F. Supp. 829, 831 (S.D.N.Y. 1970), the defendant was arrested with dynamite bombs. The police had reason to believe that he had deposited a package at the apartment of one Alpert. The police arrested Alpert without a warrant at her apartment and proceeded to search the premises for explosives. The search exceeded the permissible area of the arrestee's "immediate control" under Chimel v. California, 395 U.S. 752, 763 (1969). The district court upheld the search nevertheless, stating that the reasonable belief of the arresting agents that there might be other explosives present constituted "special circumstances"

sufficient to justify the search. The court observed that "[a]n emergency situation and grave concern for public safety confronted the authorities."

The court holds that exigent circumstances existed in this case. The dynamite stored in the unlocked trunk of the defendant's car posed a sufficiently ominous threat to the community to justify the actions of the Agent in the search and seizure. If common sense and common knowledge do not permit the conclusion that 88 sticks of dynamite loose in the world constitute a serious threat to society, the testimony of the Agent certainly does. Agent McMonagle is a trained and experienced ATF Agent with extensive training and experience in explosives. His testimony was highly credible and uncontradicted. He testified as to the inherently deadly and unstable nature of dynamite. Age, storage and weather, he testified, are significant factors affect-

ing the volatility of the substance. He further testified that dynamite improperly stored could be highly unstable and that he had learned, in the course of his work, of numerous spontaneous explosions of improperly-stored dynamite. He was aware at the time of the search of the actual age of the dynamite which had been stolen in this case. It was his opinion that a large amount of this dynamite improperly handled and improperly stored posed a grave threat to the public.

At the time of the search the Agent knew that at least the defendant and Michael Fisher knew of the location of the dynamite. He did not know if anyone else knew where it was hidden. He also did not know the whereabouts of the alleged thief who purportedly, according to the information he had received, had stolen the dynamite for the express purpose of blowing up certain buildings. Upon arriving at the farm, the Agent be-

came aware of the fact that the Chevrolet in which the dynamite was supposed to be stored was relatively close to a major public thoroughfare and to at least one residence. Being unfamiliar with both the farm and the area around it, the Agent had no knowledge with respect to the existence or location of other residences in the immediate vicinity. His credible and uncontradicted testimony was that it was his intention to remove the dynamite from public access and to remove a threat to the public as quickly and safely as possible.

Given the facts known to the Agent (as well as those matters about which he had no knowledge) at the moment of seizure and the reasonable inferences to be drawn from those facts, the court concludes that they would "warrant a man of reasonable caution in the belief" that the action taken was appropriate. See Terry v. Ohio, 392 U.S. 1, 21-22 (1968),

citations omitted. The "exigencies of the situation made [his] course imperative." McDonald v. United States, 335 U.S. 451, 456 (1948). Since the search and seizure were reasonable under the circumstances, and did not violate the fourth amendment, any and all evidence seized as a result of the search is properly admissible in evidence against the defendant.

II. Motion to Dismiss the Indictment

Defendant moves that the indictment be dismissed contending that there has been a violation of Article IV(c) of the Interstate Agreement on Detainers Act. His contention here rests on the premise that the United States had filed a detainer against him while he was in state custody. United States v. Mauro, 46 U.S.L.W. 4491 (May 23, 1978). This argument fails for the reason that the defendant was at no time "serving a term of imprisonment" within the meaning of Article IV(c) of

the Act. Cf. United States v. Roberts, 548 F.2d 665, 669-70 (6th Cir. 1977); United States v. Harris, 566 F.2d 610, 613 (8th Cir. 1977).

Accordingly, it is this 27th day of October, 1978, by the United States District Court for the District of Maryland, ORDERED:

1. That the defendant's Motion to Suppress Evidence is DENIED for the reasons set forth above, and

2. That the defendant's Motion to Dismiss the Indictment is DENIED for the reasons set forth above.

The Clerk shall mail a copy of the Memorandum and Order to Herbert Better and Catherine C. Blake, Assistant United States Attorneys, and to Benjamin Lipsitz, attorney for the defendant.

/s/ C. Stanley Blair
C. Stanley Blair
United States
District Judge

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 77-1911

United States of America,

Appellee,

v.

Lawrence David Ramapuram,

Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. C. Stanley Blair, District Judge.

Argued: May 5, 1978

Decided: May 24, 1978

Before BUTZNER and HALL, Circuit Judges, and the Honorable FRANK A. KAUFMAN, District Judge for the District of Maryland, sitting by designation.

Benjamin Lipsitz for Appellant; Herbert Better, Assistant United States Attorney (Jervis S. Finney, United States Attorney and Renee Laniado, Second Year Law Student on brief) for Appellee.

PER CURIAM:

Lawrence David Ramapuram appeals from the district court's orders denying his motion to dismiss the juvenile delinquency proceedings against him and granting the government's motion to transfer his case for adult criminal prosecution. He contends that the United States Attorney failed to timely certify as required by 18 U.S.C. § 5032 that the state juvenile court refused to assume jurisdiction over the case. We affirm.

On January 14, 1976, the United States Attorney in Maryland filed an information charging Ramapuram, who was then 17 years old, with committing an act of juvenile delinquency and certified that the State's Attorney for Baltimore County refused to assume jurisdiction. After receiving inpatient studies ordered pursuant to 18 U.S.C. § 5037(c), the court deferred prosecution on the condition that Ramapuram receive psychiatric treat-

ment and refrain from violating any law. When Ramapuram was arrested in March of 1977 on a different charge, the government sought to transfer the case for criminal prosecution. At the hearing on this motion, Ramapuram moved to dismiss the entire proceedings because the certification filed by the government was based on the State's Attorney's refusal to assume jurisdiction instead of on a state court's refusal as specified by § 5032. In its response to this motion, the government filed a new certification supported by a statement of refusal from the appropriate state court.

We agree with the district court that the admittedly proper second certification was timely filed. In United States v. Cuomo, 525 F.2d 1285 (5th Cir. 1976), a second § 5032 certification was filed on the day before trial after the defendant challenged the first one. The court stated, "[w]ithout deciding the

latest possible time for filing, we hold that the filing of a proper certificate prior to arraignment before the district court in the case at bar was sufficient compliance with § 5032 to permit the proceeding . . . to continue." 525 F.2d at 1290. Because the second certificate in this case was filed prior to Ramapuram's indictment and arraignment, we conclude that it was timely.

Affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA : (Filed 5/27/77)

v. : CRIMINAL NO. B-76-022

LAWRENCE DAVID RAMAPURAM :

MEMORANDUM AND ORDER

This is a juvenile proceeding pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, 18 U.S.C. §§ 5031-5042. The statute provides in pertinent part:

> A juvenile alleged to have committed an act of juvenile delinquency shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to an appropriate district court of the United States that the juvenile court or other appropriate court of a State (1) does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, or (2) does not have available programs and services adequate for the needs of juveniles.
>
> If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of

such State. . . .

18 U.S.C. § 5032.

In the original certification filed in this case, the United States Attorney for the District of Maryland, as the Attorney General's designee, certified that the Baltimore County State's Attorney had declined to assume jurisdiction over the juvenile defendant in connection with the acts charged.[1] This court then assumed jurisdiction and entered an order conditionally deferring prosecution. These conditions were allegedly violated and the United States sought to assert its rights under the deferred prosecution agreement by moving to transfer this case for criminal--as opposed to juvenile--prosecution. 18 U.S.C. § 5032. A hearing was held pursuant to the statute and this court orally

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[1] The file contains a letter from the Baltimore County State's Attorney to the United States Attorney specifically declining jurisdiction in this matter.

ruled that the defendant had violated the deferred prosecution agreement and that the case should be transferred for criminal prosecution.

At the hearing, however, newly-retained defense counsel moved to dismiss the entire proceeding for want of a proper certification under the above-quoted portion of 18 U.S.C. § 5032. In particular defense counsel urged that the statute requires the Attorney General to ceritfy that an appropriate state court is without, or refuses to exercise, jurisdiction. The court reserved on this motion at the hearing in order to give the government an opportunity to respond; the oral grant of the motion to transfer was made conditional upon the outcome of the motion to dismiss.

The government has now responded to the defendant's motion, offering four alternative arguments in support of its position that the motion should be denied

and jurisdiction retained. The arguments are 1) that the State's Attorney's declination of jurisdiction was sufficient under Maryland law to satisfy the federal certification requirement, 2) that certification is not required where the United States seeks, as here, to proceed against the offender as an adult, 3) that the certification is not reviewable, absent bad faith, and 4) that a new certification, from a state court, would not be untimely.[2]

Because section 5032 in its present form is of such recent origin there is a paucity of reported case law from which to seek guidance in construing it. This court is therefore writing on a clean slate in addressing the present motion and the government's responses.

Taking the government's arguments in order, it seems that certification based

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[2] Such a certification was in fact filed by the government along with its opposition to the motion to dismiss.

upon the representation of the Baltimore County State's Attorney was sufficient to satisfy the statutory requirement. Although the statute literally requires certification of the fact that an appropriate state court refuses to assume jurisdiction, this court does not believe the statute demands literal compliance. Section 5032 is founded in comity and represents a Congressional desire to defer to the states in matters of juvenile delinquency. See S.Rep. No. 93-1011, 93rd Cong., 2d Sess., reprinted in [1974] U.S. Code Cong. & Ad. News 5283, 5320.[3] The federal statutory purpose is served by giving the state the first opportunity to assert jurisdiction. As long as the state refusal to exercise jurisdiction originates from a state official having ultimate authority to assume or refuse

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[3] "A juvenile shall not be proceeded against in Federal Court unless the State courts refuse jurisdiction, or do not have adequate services available."

jurisdiction, it is pointless to require that the refusal originate in the state courts. Accordingly, it is the holding of the court that where federal jurisdiction in a juvenile case is predicated on state refusal of jurisdiction there is sufficient compliance with the certification requirement of section 5032 if the refusal originates from a state official who has the authority to make such refusal under state law.[4]

Applying this holding here, under Maryland law the State's Attorney has absolute discretion in deciding whether delinquency proceedings are appropriate. Although, as defendant correctly observes, "[a]ny person or agency" may originate a delinquency proceeding, Annotated Code of Maryland, Cts. and Jud. Proc. Art., § 3-810(a) (Supp. 1976), such proceedings are

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[4] Cases wherein the state courts lack jurisdiction are not at issue here and the court intimates no opinion on the applicability of this holding to such cases.

initiated by petition and such petitions must be prepared, signed and filed by the State's Attorney. Id., § 3-812; Md.R.Civ. P. Rules 903(a)(3), 903(b) and 904. Moreover, "[t]he State's attorney, upon assigning his reasons, may dismiss a petition alleging delinquency in open court." Code, supra, § 3-812(d). Juvenile causes in Maryland cannot proceed without the approval of the State's Attorney; he has the sole discretion controlling whether such causes may proceed and his discretion operates independently of the courts. Accordingly, this court holds that the certification of the United States Attorney that the Baltimore County State's Attorney refused to proceed against defendant satisfies the requirements of 18 U.S.C. § 5032 and permits this court to exercise its jurisdiction.

The government's second contention is wholly without merit. The quote in

footnote three, supra, and the material which follows it in the legislative history clearly refutes the government's contention that no certification is required where the government moves to transfer. S.Rep. No. 93-1011, [1974] U.S. Code Cong. & Ad. News, supra, at 5320.

As for the contention that the certification is unreviewable, in view of the holding hereinabove and below, this court need not--and hence will not--go this far. United States v. Hill, 538 F.2d 1072, 1077 (4th Cir. 1976).[5]

Finally, the court believes as the

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[5] Moreover, the court is inclined to the view expressed by the defendant, that to the extent the not-reviewable argument is viable, it is viable only as applied to review of the merits of state court refusal to accept jurisdiction. Even in United States v. Vancier, 515 F.2d 1378 (2d Cir. 1975), the case establishing the non-reviewability of Section 5032 certifications, the holding is susceptible of this interpretation, although the language is broad, because the defendant in fact sought review of the merits of the certification.

government contends that a faulty Section 5032 certification is susceptible of cure. The only significant question is one of timeliness. United States v. Cuomo, 525 F2d 1285, 1289-1290 (5th Cir. 1976). The government has now filed in the instant action a second certification based on a refusal of juvenile jurisdiction over the defendant by a judge of the Circuit Court of Baltimore County. The defendant concedes this certification is proper and agrees that the issue is one of timeliness.

The precise holding in Cuomo was: "Without deciding the latest possible time for filing, we hold that the filing of a proper certificate prior to arraignment before the district court in the case at bar was sufficient compliance with § 5032 to permit this proceeding against Cuomo to continue." Id. at 1290. The defendant argues, and reasonably so, that this and other language in Cuomo stand for the

more general proposition, of which Cuomo is factually one example, that proper certification must exist before the defendant may be "proceeded against" in the federal courts. See id. at 1289.

Defendant in the instant case has undeniably been "proceeded against" in this court.[6] But the court disagrees with the proposition that cure must precede proceedings. Although Cuomo may reasonably be so read, nonetheless that court was careful to preface its precise holding with clear language that it was not "deciding the latest possible time for filing." Both the statutory language and S.Rep. 93-1011 state that a juvenile shall

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[6] The original certification was filed over a year prior to the filing of the present motion and the cure in opposition thereto. In the interim, although prosecution was deferred, the agreement so doing was effected by order of this court and it imposed serious restraints on the defendant's liberty. Accordingly, the court holds that defendant was "proceeded against" prior to the filing of the curative certification.

not be proceeded against in federal court "unless" there is filed a proper certification. Neither source declares that there may be no proceedings "until" a proper certification is filed. Nor is the language to the effect that there may be no proceedings "unless" a certification is "first" filed. In short, there is no language of priority. Furthermore, the defendant has shown no prejudice justifying dismissal of these proceedings and the court can conceive of none. Accordingly, this court holds that in the instant case, cure was not untimely. Like the Cuomo court, this court refuses to say at what stage in the proceedings a curative certification might be untimely, but holds only that it was not so in this case. For the foregoing reasons, it is this 27th day of May, 1977, by the United States District Court for the District of Maryland, ORDERED:

That defendant's motion to dismiss

be, and the same hereby is, DENIED.

/s/ C. Stanley Blair
C. Stanley Blair
United States
District Judge

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

October 9, 1980

TO: Benjamin Lipsitz, Esq.

Catherine C. Blake, Esq.
Herbert Better, Esq.

NOTICE OF JUDGMENT

Judgment was entered in Case No. 79-5051

this date.

The Court's opinion is enclosed.

* * * * *

WILLIAM K. SLATE, II
CLERK

(Filed in United States of America, Appellee, versus Lawrence David Ramapuram, Appellant. No. 79-5051)

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 79-5051

United States of America,

Appellee,

versus

Lawrence David Ramapuram,

Appellant.

O R D E R

Upon consideration of the appellant's petition for rehearing and suggestion for rehearing en banc, and no judge having requested a poll on the suggestion for rehearing en banc,

It is ADJUDGED and ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Murnaghan with the concurrence of Judge Butzner and Judge Ervin.

FILED
NOV 7 1980
U.S. Court of
Appeals
Fourth Circuit

For the Court,

/s/ William K. Slate, II
CLERK